

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

JOEY KIMBROUGH,

Plaintiff,

v.

AMERICAN EXPRESS COMPANY AKA  
AMERICAN EXPRESS NATIONAL BANK

and

TRANS UNION LLC

Defendants.

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Case No. 1:22-cv-01993-TWP-MJD

**ANSWER AND AFFIRMATIVE  
DEFENSES OF DEFENDANT  
AMERICAN EXPRESS NATIONAL  
BANK TO COMPLAINT**

Defendant American Express National Bank (“American Express”) hereby answers the Complaint (the “Complaint”) filed by plaintiff Joey Kimbrough (“Plaintiff”) as follows:

**INTRODUCTION**

1. Answering Paragraph 1 of the Complaint, this Paragraph contains no allegations directed towards American Express and therefore no response is required. To the extent a response is required, American Express admits that Plaintiff brings this action for purported violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq. (“FCRA”), but denies that it violated the FCRA, denies that Plaintiff was harmed as a result of any of American Express’s conduct, and denies that Plaintiff is entitled to any relief whatsoever.

2. Answering Paragraph 2 of the Complaint, this Paragraph contains no allegations directed towards American Express and therefore no response is required. To the extent a response is required, American Express states that the FCRA speaks for itself and denies any allegations inconsistent therewith.

3. Answering Paragraph 3 of the Complaint, this Paragraph contains no allegations directed towards American Express and therefore no response is required. To the extent a response is required, American Express states that the FCRA speaks for itself and denies any allegations inconsistent therewith.

4. Answering Paragraph 4 of the Complaint, American Express admits that Plaintiff is pro se and that Plaintiff brings this action for purported violations of the FCRA. Except as expressly stated, American Express denies the allegations contained in Paragraph 4.

5. Answering Paragraph 5 of the Complaint, American Express denies the allegations contained therein.

6. Answering Paragraph 6 of the Complaint, American Express admits that Plaintiff brings this action for purported violations of the FCRA, but denies that it violated the FCRA, denies that Plaintiff was harmed as a result of any of American Express's conduct, and denies that Plaintiff is entitled to any relief whatsoever.

7. Answering Paragraph 7 of the Complaint, American Express denies the allegations contained therein.

8. Answering Paragraph 8 of the Complaint, American Express denies the allegations contained therein.

### **JURISDICTION AND VENUE**

9. Answering Paragraph 9 of the Complaint, American Express does not challenge subject matter jurisdiction for purposes of this action only, but denies liability to Plaintiff under the FCRA, and denies that Plaintiff is entitled to any relief whatsoever from American Express. American Express further states that Plaintiff's claims are subject to mandatory, binding arbitration and American Express specifically reserves, and does not waive, the right to compel arbitration of such claims.

10. Answering Paragraph 10 of the Complaint, American Express does not challenge subject matter jurisdiction for purposes of this action only, but denies liability to Plaintiff under the FCRA, and denies that Plaintiff is entitled to any relief whatsoever from American Express. American Express further states that Plaintiff's claims are subject to mandatory, binding arbitration and American Express specifically reserves, and does not waive, the right to compel arbitration of such claims.

11. Answering Paragraph 11 of the Complaint, American Express does not challenge venue and personal jurisdiction for purposes of this action only, but denies liability to Plaintiff under the FCRA, and denies that Plaintiff is entitled to any relief whatsoever from American Express. American Express further states that Plaintiff's claims are subject to mandatory, binding arbitration and American Express specifically reserves, and does not waive, the right to compel arbitration of such claims.

### **PARTIES**

12. Answering Paragraph 12 of the Complaint, on information and belief, American Express admits on information and belief the allegations contained therein.

13. Answering Paragraph 13 of the Complaint, American Express admits that Plaintiff is an Indiana resident, but denies the remaining allegations contained therein.

14. Answering Paragraph 14 of the Complaint, American Express states this Paragraph contains a legal conclusion to which no response is required. To the extent a response is required, American Express lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 and, on that basis, denies the allegations contained therein.

15. Answering Paragraph 15 of the Complaint, American Express states that it is a national banking association with its main office in Utah. Except as expressly admitted, American Express denies the allegations in Paragraph 15.

16. Answering Paragraph 16 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

17. Answering Paragraph 17 of the Complaint, American Express states that this Paragraph contains a legal conclusion to which no response is required. To the extent a response is required, American Express admits the allegations contained therein for purposes of this action only.

18. Answering Paragraph 18 of the Complaint, American Express states that this Paragraph contains legal conclusions to which no response is required. To the extent a response is required, American Express admits, for purposes of this action only, that it is a user of consumer reports as those terms are defined under the FCRA.

19. Answering Paragraph 19 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

20. Answering Paragraph 20 of the Complaint, American Express states this Paragraph contains a legal conclusion to which no response is required. To the extent a response is required, American Express denies the allegations contained therein.

#### **GENERAL ALLEGATIONS**

21. Answering Paragraph 21 of the Complaint, American Express denies the allegations contained therein.

22. Answering Paragraph 22 of the Complaint, American Express states that the FCRA speaks for itself and denies any allegations inconsistent therewith. To the extent a further response is required, American Express denies that it violated the FCRA, denies that Plaintiff was harmed as a result of any of American Express's conduct, and denies that Plaintiff is entitled to any relief whatsoever.

23. Answering Paragraph 23 of the Complaint, American Express admits the allegations contained therein.

24. Answering Paragraph 24 of the Complaint, American Express denies the allegations contained therein.

25. Answering Paragraph 25 of the Complaint, American Express denies the allegations contained therein.

26. Answering Paragraph 26 of the Complaint, American Express admits that Plaintiff brings this action for purported violations of the FCRA, but denies that it violated the FCRA, denies that Plaintiff was harmed as a result of any of American Express's conduct, and denies that Plaintiff is entitled to any relief whatsoever.

### **FACTUAL ALLEGATIONS**

27. Answering Paragraph 27 of the Complaint, American Express incorporates its responses to Paragraphs 1 through 26, above, as if fully set forth herein.

#### **A. e-OSCAR**

28. Answering Paragraph 28 of the Complaint, this Paragraph contains no allegations directed towards American Express and therefore no response is required. To the extent a response is required, American Express admits the allegations contained therein.

29. Answering Paragraph 29 of the Complaint, this Paragraph contains no allegations directed towards American Express and therefore no response is required. To the extent a response is required, American Express admits the allegations contained therein.

30. Answering Paragraph 30 of the Complaint, American Express denies the allegations contained therein.

31. Answering Paragraph 31 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

32. Answering Paragraph 32 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

**B. Plaintiff's Consumer Report Contains Inaccurate Adverse Tradelines, which Plaintiff Disputed Multiple Times to no Avail**

33. Answering Paragraph 33 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 and, on that basis, denies the allegations contained therein.

34. Answering Paragraph 34 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 and, on that basis, denies the allegations contained therein.

35. Answering Paragraph 35 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 and, on that basis, denies the allegations contained therein.

36. Answering Paragraph 36 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 and, on that basis, denies the allegations contained therein.

37. Answering Paragraph 37 of the Complaint, American Express denies the allegations contained therein.

38. Answering Paragraph 38 of the Complaint, American Express denies the allegations contained therein.

39. Answering Paragraph 39 of the Complaint, American Express denies the allegations contained therein.

40. Answering Paragraph 40 of the Complaint, American Express states that any communication Plaintiff may have sent speaks for itself and denies any allegations inconsistent therewith.

41. Answering Paragraph 41 of the Complaint, American Express denies the allegations contained therein.

42. Answering Paragraph 42 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies the allegations contained therein.

43. Answering Paragraph 43 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 43 and, on that basis, denies the allegations contained therein.

44. Answering Paragraph 44 of the Complaint, American Express denies that it furnished any inaccurate information to the CRAs about Plaintiff's American Express card account. Except as expressly stated, American Express lacks knowledge or information at this

time sufficient to form a belief as to the truth of the allegations contained in Paragraph 44 and, on that basis, denies the allegations contained therein.

45. Answering Paragraph 45 of the Complaint, American Express denies that it furnished any inaccurate information to the CRAs regarding Plaintiff's American Express card account. American Express further states that any communication Plaintiff may have sent to the Consumer Financial Protection Bureau speaks for itself and denies any allegations inconsistent therewith.

46. Answering Paragraph 46 of the Complaint, American Express denies that it violated the FCRA, denies that Plaintiff was harmed as a result of any of American Express's conduct, and denies that Plaintiff is entitled to any relief whatsoever. Except as expressly admitted, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 46 and, on that basis, denies the remaining allegations contained therein.

47. Answering Paragraph 47 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 47 and, on that basis, denies the allegations contained therein.

48. Answering Paragraph 48 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 and, on that basis, denies the allegations contained therein.

49. Answering Paragraph 49 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 and, on that basis, denies the allegations contained therein.



50. Answering Paragraph 50 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 50 and, on that basis, denies the allegations contained therein.

51. Answering Paragraph 51 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 and, on that basis, denies the allegations contained therein.

52. Answering Paragraph 52 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 52 and, on that basis, denies the allegations contained therein.

53. Answering Paragraph 53 of the Complaint, American Express denies the allegations contained therein.

54. Answering Paragraph 54 of the Complaint, American Express denies the allegations contained therein.

55. Answering Paragraph 55 of the Complaint, American Express states that the FCRA speaks for itself and denies any allegations inconsistent therewith.

56. Answering Paragraph 56 of the Complaint, American Express states that the FCRA speaks for itself and denies any allegations inconsistent therewith.

57. Answering Paragraph 57 of the Complaint, American Express denies the allegations contained therein.

58. Answering Paragraph 58 of the Complaint, American Express denies the allegations contained therein.

59. Answering Paragraph 59 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 59 and, on that basis, denies the allegations contained therein.

60. Answering Paragraph 60 of the Complaint, American Express denies the allegations contained therein.

61. Answering Paragraph 61 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 and, on that basis, denies the allegations contained therein.

62. Answering Paragraph 62 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 and, on that basis, denies the allegations contained therein.

63. Answering Paragraph 63 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 and, on that basis, denies the allegations contained therein.

64. Answering Paragraph 64 of the Complaint, American Express denies the allegations contained therein.

65. Answering Paragraph 65 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 65 and, on that basis, denies the allegations contained therein.

66. Answering Paragraph 66 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 66 and, on that basis, denies the allegations contained therein.

67. Answering Paragraph 67 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 67 and, on that basis, denies the allegations contained therein.

68. Answering Paragraph 68 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 68 and, on that basis, denies the allegations contained therein.

69. Answering Paragraph 69 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 69 and, on that basis, denies the allegations contained therein.

70. Answering Paragraph 70 of the Complaint, American Express lacks knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in Paragraph 70 and, on that basis, denies the allegations contained therein.

71. Answering Paragraph 71 of the Complaint, American Express denies the allegations contained therein.

72. Answering Paragraph 72 of the Complaint, American Express denies the allegations contained therein.

**C. Inaccuracy - AMEX**

73. Answering Paragraph 73 of the Complaint, American Express denies the allegations contained therein.

74. Answering Paragraph 74 of the Complaint, American Express denies the allegations contained therein.

75. Answering Paragraph 75 of the Complaint, American Express denies the allegations contained therein.

76. Answering Paragraph 76 of the Complaint, American Express denies the allegations contained therein.

77. Answering Paragraph 77 of the Complaint, American Express denies the allegations contained therein.

78. Answering Paragraph 78 of the Complaint, American Express denies the allegations contained therein.

79. Answering Paragraph 79 of the Complaint, American Express denies the allegations contained therein.

80. Answering Paragraph 80 of the Complaint, American Express admits that Plaintiff brings this action for purported violations of the FCRA, but denies that it violated the FCRA, denies that Plaintiff was harmed as a result of any of American Express's conduct, and denies that Plaintiff is entitled to any relief whatsoever. Except as expressly admitted, American Express denies the allegations in Paragraph 80.

81. Answering Paragraph 81 of the Complaint, American Express denies the allegations contained therein.

82. Answering Paragraph 82 of the Complaint, American Express admits that Plaintiff brings this action for purported violations of the FCRA, but denies that it violated the FCRA, denies that Plaintiff was harmed as a result of any of American Express's conduct, and denies that Plaintiff is entitled to any relief whatsoever. Except as expressly admitted, American Express denies the allegations in Paragraph 82.

83. Answering Paragraph 83 of the Complaint, American Express denies the allegations contained therein.

84. Answering Paragraph 84 of the Complaint, American Express denies the allegations contained therein.

85. Answering Paragraph 85 of the Complaint, American Express denies the allegations contained therein.

86. Answering Paragraph 86 of the Complaint, American Express denies the allegations contained therein.

87. Answering Paragraph 87 of the Complaint, American Express denies the allegations contained therein.

88. Answering Paragraph 88 of the Complaint, American Express denies the allegations contained therein.

89. Answering Paragraph 89 of the Complaint, American Express denies the allegations contained therein.

**D. Damages**

90. Answering Paragraph 90 of the Complaint, American Express denies the allegations contained therein.

91. Answering Paragraph 91 of the Complaint, American Express denies the allegations contained therein.

92. Answering Paragraph 92 of the Complaint, American Express denies the allegations contained therein.

93. Answering Paragraph 93 of the Complaint, American Express admits that Plaintiff brings this action for purported violations of the FCRA, but denies that it violated the FCRA, denies that Plaintiff was harmed as a result of any of American Express's conduct, and

denies that Plaintiff is entitled to any relief whatsoever. Except as expressly stated, American Express denies the allegations in Paragraph 93.

**FIRST CAUSE OF ACTION**  
**(VIOLATION OF FCRA 15 U.S.C. § 1681E(B))**

94. Answering Paragraph 94 of the Complaint, American Express incorporates by reference its answers to Paragraphs 1-93, above, as though fully stated herein.

**A. Trans Union Failed to Assure Credit Reporting Accuracy**

95. Answering Paragraph 95 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

96. Answering Paragraph 96 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

97. Answering Paragraph 97 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

98. Answering Paragraph 98 of the Complaint, states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

99. Answering Paragraph 99 of the Complaint, states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

**B. Willful Violations**

100. Answering Paragraph 100 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

101. Answering Paragraph 101 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

102. Answering Paragraph 102 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

103. Answering Paragraph 103 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

104. Answering Paragraph 104 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

105. Answering Paragraph 105 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

106. Answering Paragraph 106 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

107. Answering Paragraph 107 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

108. Answering Paragraph 108 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

109. Answering Paragraph 109 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

110. Answering Paragraph 110 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

**SECOND CAUSE OF ACTION**  
**(VIOLATION OF FAIR CREDIT REPORTING ACT**  
**15 U.S.C. § 1681s-2(b) and 1681i(a)(1))**

111. Answering Paragraph 111 of the Complaint, American Express incorporates by reference its answers to Paragraphs 1-110, above, as though fully stated herein.

**A. AMEX Failed to Reinvestigate Following Plaintiff's Dispute**

112. Answering Paragraph 112 of the Complaint, American Express states that the FCRA speaks for itself and denies any allegations inconsistent therewith.

113. Answering Paragraph 113 of the Complaint, American Express denies the allegations contained therein.

114. Answering Paragraph 114 of the Complaint, American Express denies the allegations contained therein.

115. Answering Paragraph 115 of the Complaint, American Express denies the allegations contained therein.

116. Answering Paragraph 116 of the Complaint, American Express denies the allegations contained therein.



117. Answering Paragraph 117 of the Complaint, American Express denies the allegations contained therein.

118. Answering Paragraph 118 of the Complaint, American Express denies the allegations contained therein.

119. Answering Paragraph 119 of the Complaint, American Express denies that it violated the FCRA, denies that Plaintiff was harmed as a result of any of American Express's conduct, and denies that Plaintiff is entitled to any relief whatsoever. Except as expressly stated, American Express denies the allegations in Paragraph 119.

120. Answering Paragraph 120 of the Complaint, American Express denies the allegations contained therein.

121. Answering Paragraph 121 of the Complaint, American Express denies the allegations contained therein.

122. Answering Paragraph 122 of the Complaint, American Express denies the allegations contained therein.

**B. Willful Violations**

123. Answering Paragraph 123 of the Complaint, American Express denies the allegations contained therein.

124. Answering Paragraph 124 of the Complaint, American Express denies the allegations contained therein.

125. Answering Paragraph 125 of the Complaint, American Express denies the allegations contained therein.

126. Answering Paragraph 126 of the Complaint, American Express denies the allegations contained therein.

**C. The CRA Defendant Failed to Reinvestigate the Disputed Information in Violation of 15 U.S.C. § 1681i(a)(1)**

127. Answering Paragraph 127 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

128. Answering Paragraph 128 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

129. Answering Paragraph 129 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

130. Answering Paragraph 130 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

131. Answering Paragraph 131 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

132. Answering Paragraph 132 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

133. Answering Paragraph 133 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

134. Answering Paragraph 134 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

135. Answering Paragraph 135 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

136. Answering Paragraph 136 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

137. Answering Paragraph 137 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

**THIRD CAUSE OF ACTION**  
**(VIOLATION OF FAIR CREDIT REPORTING ACT**  
**15 U.S.C. § 1681i(a)(4))**

138. Answering Paragraph 138 of the Complaint, American Express incorporates by reference its answers to Paragraphs 1-137, above, as though fully stated herein.

**A. The CRA Defendant Failed to Review and Consider all Relevant Information**

139. Answering Paragraph 139 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

140. Answering Paragraph 140 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

**B. Willful Violations**

141. Answering Paragraph 141 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

142. Answering Paragraph 142 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

143. Answering Paragraph 143 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

**FOURTH CAUSE OF ACTION**  
**(VIOLATION OF FAIR CREDIT REPORTING ACT**  
**15 U.S.C. § 1681i(a)(5)(A))**

144. Answering Paragraph 144 of the Complaint, American Express incorporates by reference its answers to Paragraphs 1-144, above, as though fully stated herein.

**A. The CRA Defendant Failed to Delete Disputed and Inaccurate Information**

145. Answering Paragraph 145 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

146. Answering Paragraph 146 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

**B. Willful Violations**

147. Answering Paragraph 147 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

148. Answering Paragraph 148 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

149. Answering Paragraph 149 of the Complaint, American Express states that this Paragraph contains no allegations directed towards American Express and therefore no response is required.

**PRAYER FOR RELIEF**

150. Answering Paragraph 150 of the Complaint (Plaintiff's Prayer for Relief), American Express denies that it violated the FCRA and denies that Plaintiff is entitled to any relief whatsoever from American Express.

**AFFIRMATIVE DEFENSES**

Without assuming the burden of proof where it otherwise lies with Plaintiff, American Express asserts the following affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE**

**(Arbitration)**

Plaintiff's claims are subject to binding arbitration pursuant to a valid and binding arbitration agreement and American Express specifically reserves, and does not waive, the right to compel arbitration of any claims asserted by Plaintiff.

**SECOND AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

To the extent that Plaintiff has suffered any damage as a result of the matters alleged in the Complaint, Plaintiff failed to mitigate those damages and Plaintiff's claims therefore are barred, in whole or in part.

**THIRD AFFIRMATIVE DEFENSE**

**(Laches)**

Plaintiff has unreasonably delayed taking action in connection with the alleged claims, causing substantial prejudice to American Express, and such claims therefore are barred pursuant to the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

**(Apportionment/Comparative Negligence)**

American Express is not legally responsible with respect to the damages that may be claimed by Plaintiff as a result of the matters alleged in the Complaint; however, if American Express is found to be legally responsible in any manner, then it alleges that its legal responsibilities are not the sole and proximate cause of the injuries and the damages awarded, if any, are to be apportioned accordance with the fault and legal responsibility of all non-American Express parties, persons and entities, or the agents, servants and employees of such non-American Express parties, persons and entities, who contributed to and/or caused said damages, according to proof presented during arbitration.

**FIFTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

The Complaint, and each claim and cause of action set forth therein, is barred, in whole or in part, by the conduct, actions, and inactions of Plaintiff, which amount to and constitute an estoppel of the claims and any relief sought thereby.

**SIXTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

The Complaint, and each claim and cause of action set forth therein, is barred in whole or in part, on the grounds that Plaintiff may obtain no relief under the Complaint by reason of the doctrine of unclean hands.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Independent, Intervening Conduct)**

Plaintiff is barred from recovery in that any damage, injury and/or harm Plaintiff allegedly sustained was the direct and proximate result of the independent, intervening, negligent, criminal and/or unlawful conduct of independent parties or their agents, and not the result of any act or omission on the part of American Express.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Statute of Limitations)**

The Complaint, and each claim and cause of action set forth therein for relief herein are barred by applicable statutes of limitations including but not limited to 15 U.S.C. § 1681p.

**NINTH AFFIRMATIVE DEFENSE**

**(Reservation of Rights)**

American Express expressly reserves the right to assert such other and further affirmative defenses as may be appropriate.

**PRAYER**

**WHEREFORE**, American Express prays as follows:

- (1) That Plaintiff take nothing by virtue of this action;
- (2) That the Complaint be dismissed with prejudice;
- (3) That judgment be entered against Plaintiff and in favor of American Express;
- (4) That American Express be awarded its attorneys' fees and costs incurred herein; and
- (5) That the Court award any other and further relief it deems just and proper.

Dated: December 13, 2022

/s/ Brian C. Frontino

Brian C. Frontino  
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Attorney for Defendant *American Express  
National Bank*



**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was filed with the Clerk of the Court via CM/ECF on December 13, 2022, and served on the counsel and/or parties of record.

/s/ Brian C. Frontino

Brian C. Frontino